

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 400

January 19, 1977

APPLICATION OF RENTER'S CREDIT TO SPOUSES MARRIED DURING THE TAXABLE YEAR

Syllabus:

Advice has been requested as whether subdivision (b) of Section 17053.5 permits married California residents to both claim the renter's credit if they were married after March 1st of the taxable year and maintained separate rented places of abode until the date of marriage.

The pertinent portions of Section 17053.5 read as follows:

- (a) . . .
Except as provided in subdivision (b) of this section a husband and wife shall receive but one credit under this section.
- (b) In the case of a husband and wife, if each spouse maintained a separate place of residence and resided in this state during the entire taxable year, each spouse will be allowed the full credit provided in subdivision (a).

The initial question of marital status is governed by Section 17060 of the Revenue and Taxation Code which provides that for purposes of Section 17053.5 marital status is determined as of the close of the taxable year. Therefore the only remaining question to be answered is whether the prepositional adverbial phrase "during the entire taxable year" in subdivision (b) modifies the verb "maintained" as well as the verb "resided." Such a determination requires the use of various intrinsic guides to statutory interpretation. The statutory rule of construction known as the "rule of the last antecedent" to the effect that relative and qualifying words, phrases and classes are to be applied only to the word or phrase immediately preceding was rejected on the basis that it does not apply to an adverbial phrase modifying a verb. Kelly v. Personnel Board, 31 Cal.App.2d 443. Furthermore, the continued vitality of the rule is suspect in light of such decisions as that of the Supreme Court in Porto Rico Ry, Light & Power Co. v. Mor, 253 U.S. 345 (1920) wherein it was stated: "When several words are followed by a clause which is as applicable to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all."

The statutory guides of construction found to be applicable were the rule that exceptions to the general rule are to be strictly construed (Tynan v. Walker, 35 Cal. 634; 45 Cal. Jur. 2d, Statutes, § 134) and the rule that the

various parts of a statutory enactment are to be harmonized (Moyer v. Workmen's Compensation Appeals Board, 10 Cal.3d 222; 45 Cal. Jur. 2d, Statutes, § 118).

It was determined that under the general rule of § 17053.5(a) a husband and wife are limited to but one renter credit between them; therefore, a strict construction of the exception provided in subdivision (b) would require that it be limited to those cases where the spouses maintain separate places of abode for the entire year. In harmonizing the various parts of Section 17053.5 special consideration was given to subdivision (c) wherein spouses are denied both the renter credit and the homeowners exemption unless each spouse maintains a separate residence for the entire year. To interpret subdivision (b) as allowing both spouses a credit when they do not maintain separate rented residences for the entire year would result in an irreconcilable conflict with subdivision (c).

Based upon the relevant rules of construction discussed herein it is our position that the legislature intended to limit a husband and wife to but one renter's credit between them unless each spouse maintained a separate residence for the entire taxable year.